

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
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WELLS FARGO BANK, N.A.,

Plaintiff,

v.

BIVONA & COHEN, P.C. and JOHN
BIVONA a/k/a JOHN V. BIVONA,

Defendants.

No. 12-CV-5212 (RA)

ORDER ADOPTING REPORT &
RECOMMENDATION

RONNIE ABRAMS, United States District Judge:

Plaintiff Wells Fargo Bank, N.A. initiated this action to enforce two loans made to Defendant Bivona & Cohen, P.C. and guaranteed by Defendant John Bivona. On September 30, 2015, the Court granted Wells Fargo's motion for summary judgment against John Bivona, "resolving Wells Fargo's claims against Defendant Bivona in favor of Wells Fargo and dismissing Bivona's counterclaims." Dkt. 80 at 29.

On January 21, 2016, Wells Fargo moved for summary judgment on the amounts of damages, attorneys' fees, and costs to which it is entitled on its claims against Bivona. *See* Dkt. 103. On May 11, 2016, Magistrate Judge Gorenstein issued a thorough and well-reasoned Report & Recommendation ("Report"), recommending that Wells Fargo's motion be granted and that "[j]udgment should be awarded in favor of Wells Fargo and against Bivona in the amount of \$1,530,591.46, with pre-judgment interest accruing at the rate of \$109.95 per day from February 18, 2016, until the date of judgment." Dkt. 125 ("Rep.") at 24. That amount included Bivona's obligations under his guarantees, interest on those obligations, attorneys' fees, and costs. *See id.* at 23–24. The Report also explained that "the parties have fourteen (14) days including weekends

and holidays from service of this Report and Recommendation to serve and file any objections.”
Id. at 24. Neither party objected to the Report.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “Where no timely objection has been made . . . a district court need only find that there is no clear error on the face of the record in order to accept the Report and Recommendation.” *Pineda v. Masonry Const., Inc.*, 831 F. Supp. 2d 666, 670 (S.D.N.Y. 2011) (internal quotation marks omitted). The Court has reviewed Judge Gorenstein’s Report for clear error and found none. The Court therefore adopts the Report in its entirety.

As stated in the Report, because the parties did not file timely objections, they “will not be permitted to raise any objections to [the Report] on appeal.” Rep. at 24 (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010)).

CONCLUSION

The Court adopts Judge Gorenstein’s Report & Recommendation in its entirety. The Clerk of Court is respectfully directed to enter judgment in favor of Plaintiff Wells Fargo Bank, N.A. and against Defendant John Bivona in the amount of \$1,530,591.46, with pre-judgment interest accruing at the rate of \$109.95 per day from February 18, 2016 until the date of judgment. As no other claims in this action remain outstanding, the Clerk of Court is also directed to close this case.
SO ORDERED.

Dated: June 1, 2016
New York, New York



Ronnie Abrams
United States District Judge